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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1953

No. 246

HANLON BROWN, as County Treasurer of Sutter County, State of California; BOARD OF TRUSTEES OF RECLAMATION DISTRICT No. 1500, the individual trustees being ART DOERING, PHIL LEISER, ADAM RICHTER, H. D. RICHTER, P. A. JACOBSON, J. LEATHERS and L. GARNER,

Petitioners,

vs.

SUTTER BASIN CORPORATION, LTD., a corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the Supreme Court of the State of California

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to the Supreme Court of the State of California.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of California entered in the above-entitled case on February 17, 1953, of which decision rehearing was denied by that court on March 16, 1953.

OPINIONS BELOW.

The opinion of the Supreme Court of the State of California (R. 113) is reported in 40 Advance California Reports (A.C.) 239, the official advance reports of that court,[1] and also in 253 P. 2d 649. The opinion of the District Court of Appeal of the State of California for the Third Appellate District (R. 82) the court of first instance, is reported in 226 P. 2d 600.

JURISDICTION.

The judgment of the Supreme Court of California was entered on February 17, 1953 (R. 113). A petition for rehearing filed on March 3, 1953 (R. 132) was denied on March 16, 1953 (R. 141). On June 3 Mr. Justice Douglas signed an order extending the time to file petition for writ of certiorari to and including August 13, 1953 (R. 144). The jurisdiction of this

[1]The decision will be officially reported in 40 Cal. 2d .....

court is invoked under Title 28 U.S.C., Section 1257(3).

The constitutional question presented by this petition was raised by petitioners' answer in the court of first instance. That court, as will more particularly appear from the Statement, refused to pass on the question. The Supreme Court of California determined the question adversely to petitioners. A rehearing, requested by petitioners on that question, among others, was denied, two justices voting in favor of the rehearing.

QUESTION PRESENTED.

Whether the construction of a state statute by a state court to extinguish an assessment based on special benefits levied by a reclamation district violates the Fourteenth Amendment to the Constitution of the United States as to landowners in the district who have paid their portion of the assessment in full, when the following circumstances exist:

(1) The extinguishment of the assessment is accomplished by the use of the proceeds from the sale or rental of lands acquired by the district for nonpayment of the assessment, to pay the bonds issued against the assessment, and

(2) No provision is made for equalizing or attempting to equalize, even approximately, the assessment before it is extinguished, as between those landowners who have paid in full and those who have not paid in full, and

(3) There is an enormous benefit to the landowners who have not paid in full, and particularly to respondent here, one of those landowners, who is thereby relieved of a principal obligation amounting to approximately $365,000.

STATUTES INVOLVED.

The pertinent statutory provisions are printed in an appendix to the petition.[2]

STATEMENT.

The facts in this case were never in dispute; they were included in a "Stipulation as to Certain Facts" submitted to the court of first instance (R. 29) and most of them are set out in the opinion of the Supreme Court of California (R. 113). We accept the statement of that court as to the facts and as to the statutes and their legal effect under state law except as supplemented hereafter. Those facts which appear pertinent to the constitutional question are summarized as follows:

This litigation arose out of a call made by petitioner Brown, County Treasurer of Sutter County, for the payment of a certain portion of an assessment levied against lands in Reclamation District No. 1500, an agency of the State of California.

The assessment was levied by the district in 1919, and apportioned then among the landowners in ac-

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[2]Cited "App. ___".

cordance with special benefits, under Section 3456 of the Political Code (App. p. i). Bonds were issued against the unpaid portion of the assessment in 1920, and refunding bonds in the amount of the assessment still unpaid, $4,778,986.78, were issued in 1930 maturing serially from 1941 to 1962 (R. 25, 30 and 114).

Petitioner Brown made his call for the payment of certain sums estimated in accordance with Section 3480 of the Political Code (App. p. ii) as amended in 1949. His estimate includes the amounts of the installments of interest and of principal due January 1, 1950, upon the refunding bonds. The amendment of 1949 (App. p. ii) excludes from the estimate to be made by a county treasurer all amounts in a district's Bond Fund which were derived from the rentals or sales of lands sold to him to satisfy delinquencies in payment of calls.

At the time the call in question was issued about 83% of the principal of the assessment had been paid; and the only portion that was unpaid was owed as follows:

Sutter Basin Corporation, Ltd. (Respondent herein)	$365,403.37
Other landowners (substantially all of whom are represented by the delinquent lands of the district sold subject to the uncalled and unpaid assessment into private ownership September 13, 1949)	415,401.80
	$780,805.17

(The figure $780,805.17 is subject to a credit for certain calls approximating 10% (R. 30-31).)

Thus the petitioning County Treasurer was calling upon only those landowners to pay who had not paid their assessment.

By writ of mandate Sutter Basin Corporation, Ltd., respondent here, sought to compel the treasurer to cancel that call, and to estimate the funds available for payment of the bonds in the manner directed by Section 3480 as it read prior to the 1949 amendment, and as it read when the bonds were issued (App. p. ii).

There were available to the Bond Fund funds derived from the rentals or sales of lands sold to the treasurer to satisfy delinquencies in payment of the calls on the assessment in a total amount adequate to pay all remaining principal and interest due or to become due on the outstanding bonds to maturity (R. 116). Therefore the effect of the action sought by Sutter Basin Corporation, Ltd., was to prevent any further calls on the assessment prior to full payment of the bonds.

The treasurer, and the trustees of the district, urged to the lower court that the 1949 amendment to Section 3480 (App. p. ii) should be given its full effect, as a practicable legislative method of equalizing the assessment. The California District Court of Appeal for the Third Appellate District, the court of first instance, however, held that if applied to bonds issued prior to its effective date, the 1949 amendment

would be unconstitutional as impairing the landowner-bondowner contract which arose upon the sale of the bonds (R. 82 at 87).

The California Supreme Court granted a hearing in the matter, and thereafter by a 5-2 vote reached the same conclusion (R. 113 at 119). Petitioners do not challenge this holding as violative of the federal Constitution.

But if the legislative attempt to equalize the assessment by amending Section 3480 was ineffectual, the problem of the unpaid assessment remained. Petitioners alleged in their answer below that extinguishment of the assessment would violate the federal (and state) constitution (R. 23-25).

The court of first instance refused to pass on this question. It said:

> "In addition, respondents[3] further argue that this court should decide whether or not the unpaid portion of petitioner's assessment will be extinguished if and when the outstanding bonds have been fully paid and cancelled without petitioner's assessment having been called. We do not consider that such matters are properly before the court for decision in this proceeding, and nothing said herein is to be construed as determinative thereof." (R. 89.)

The California Supreme Court met this issue directly, however, holding that the obligation to pay the assessment was limited; that the obligation is ex-

[3]Petitioners in this court.

tinguished when the bonds are paid. The court admitted that the applicable statutes "do not necessarily imply that the assessment will be extinguished as the bonds are retired * * *" (R. 122) and said that "Under no statute is the assessment lien extinguished by discharge of the outstanding bonds * * *" (R. 122), but after discussion it concluded that: "Upon payment of the bonds, the assessment will have been fully discharged." (R. 123.) Notice was taken of the constitutional objections to the extinguishment of the assessment by the petitioners here:

> "The county treasurer urges, however, that to permit a discharge of the unpaid assessments will discriminate against the landowners who have paid their assessments in full. Such result, it is argued, would cause them to bear the greater part of the cost of the improvement and deny to them equal protection of the laws, due process of law * * *" (R. 124).

The court said that each landowner had had an option to pay his assessment in full in bonds or to wait for call upon it. In the latter case, some fortuitous event might relieve him of it. Those landowners who chose the latter course (either through wisdom or necessity) paid certain additional charges (R. 125). The court said:

> "The landowners taking the second alternative relied upon the chance that the bond fund would be sufficient to meet all accruing amounts of principal and interest. That they have benefited by the exercise of business judgment which the law permitted is of no legal consequence in this pro-

> ceeding. *Theirs was the greater risk, and theirs was the greater gain.*" (Emphasis added.) (R. 125-126.)

The court refers briefly to the economic depression that led to the acquisition by the district of lands on which assessment payments were delinquent, and the subsequent increase in value of those lands.

> "The amount here in controversy represents almost exclusively that increase in value. * * * That all the landowners are not entitled to share in this fortuitous increase results from the course each selected to discharge the lien of his assessment." (R. 125.)[4]

In their petition for rehearing petitioners raised the same questions as to constitutionality as before, and pointed out again the provisions in the law for both surplus and deficiency assessments:

> "The provisions dealing with a surplus assessment are consistent with the requirements of the United States Constitution, which is not the case

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[4]The "Stipulation as to Certain Facts" and the opinion of the Supreme Court of California each point out that a large part of the assessment paid by all parties, both the landowners who have fully paid and the landowners, like respondent here, who have not fully paid, was paid by acquiring and depositing bonds of the district against the assessment (R. 30; for statutory provision see Political Code Section 3480, App. p. iii). Many of these bonds were purchased at substantial discounts. Petitioners do not conceive that this fact is relevant to the constitutional issue. Petitioners have conceded in their request for rehearing before the Supreme Court of California that in the event of the equalization which they seek,

> "* * * doubtless the fact some assessments were paid in bonds purchased at a discount might limit refunds to the amount paid for the bonds." (R. 136.)

if the assessment is automatically cancelled when the bonds are paid * * *

"If there is a surplus after payment of bonds it may be deposited in the general fund of the District[5] and used for operation and maintenance.

"Or trustees may distribute the surplus where not needed for reclamation among the landowners of the district."[6] (R. 135.)

Petitioners pointed out that:

"* * * the reclamation law * * * contemplates the possibility of the need for additional money and the possibility of having more than enough money. In each instance the aim and purpose of the procedure is to equalize the costs of the reclamation works—the burden of the assessment—among the landowners of the district, as, we submit, is required by State law and by the Federal Constitution itself." (R. 136.)

The rehearing was, however, denied, two judges voting in favor of it (R. 141) and the peremptory writ of mandate issued by the Supreme Court of California directs petitioners' treasurer and trustees:

"* * * upon payment of the said refunding bonds of Reclamation District No. 1500 to deem and to treat the 1919 assessment as having been fully discharged and to thereafter refrain from making any further calls against the 1919 assessments." (R. 143.)

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[5]See Political Code Section 3480. (App. p. iii.)
[6]See Political Code Section 3454, subd. 12. (App. p. i.)

REASONS FOR GRANTING THE WRIT.

1. Special assessments for local improvements, reasonably proportionate to special benefits, have been carefully supervised as to their constitutionality by this court in many cases.

In *Myles Salt Co. v. Bd. of Commissioners,* 239 U.S. 478, this court held that it was a denial of due process to require one landowner to pay for the benefits which other landowners within a district had received. The court said, at page 485:

> "It is to be remembered that a drainage district has the special purpose of the improvement of particular property and when it is so formed to include property which is not and cannot be benefited directly or indirectly, including it only that it may pay for the benefit to other property, there is an abuse of power and an act of confiscation."

In *Kansas City S.R. Co. v. Road Improvement Dist. No. 3,* 266 U.S. 379, the court said:

> "To justify an assessment of benefits to particular lands it is not essential that the benefits be direct or immediate * * * *but it is essential that they have a better basis than mere speculation or conjecture."* (At p. 387; emphasis ours.)

In *Thomas v. Kansas City S. R. Co.,* 261 U.S. 481, the court, speaking through Justice Brandeis, overthrew an assessment levied against a railroad. The latter derived "some measure of indirect benefit" (p. 484) but no "direct or immediate benefit" (p. 485) from the proposed improvement and the assessment

was a "very heavy burden" (p. 485), and was "grossly discriminatory" (p. 485).

In *Gast Realty and Investment Co. v. Schneider Granite Co.*, 240 U.S. 55, Justice Holmes epitomized the relevant holdings of these cases as follows:

> "* * * if the law is of such a character that there is no reasonable presumption that substantial justice generally will be done, but the probability is that the parties will be taxed disproportionately to each other and to the benefit conferred the law cannot stand against the complaint of one so taxed in fact." (pp. 58-59.)

The constitutionality of the very law under consideration here, the California Reclamation District Law, was upheld by this court in *Hagar v. Reclamation District No. 108,* 111 U.S. 701, where the court said of the assessment procedure:

> "All that is required in such cases is that the charges shall be apportioned in some reasonable mode, according to the benefit received. Absolute equality in imposing them may not be reached; only an approximation to it may be attainable. If no direct and invidious discrimination in favor of certain persons to the prejudice of others be made, it is not a valid objection to the mode pursued that, to some extent, inequalities may arise." (p. 705.)

2. If due process requires the assessment to be levied in some reasonable manner on the basis of special benefits and withont gross discrimination, it follows that payment or discharge of the existing

assessment must be upon the same basis in order that each landowner ultimately be charged for his share of the benefit. Were it otherwise, one landowner would in the end pay for the benefits resulting to another landowner, and he who reaps the benefit would not bear the burden. The landowners would be charged their special benefit assessments "disproportionately to each other and to the benefits conferred". Under such circumstances the "law cannot stand up" whether the unfair result is brought about by the original levy of the assessment or by the mode of its payment, discharge or extinguishment. Certainly the apportionment of costs of a special improvement among landowners should not in any event be left to chance.

The California Supreme Court has held in this case that all money in the Bond Fund of the district representing fruits of the assessment, that is to say, proceeds from the rental or sale of delinquent lands, should be used to pay the bonds. Petitioners do not here challenge this ruling, but they do challenge the further holding of the state court that the payment of the bonds extinguishes the assessment since payment by the various landowners, or discharge of their unpaid assessments thus brought about, bear no relationship to the special benefits each has received. The result is discrimination against those who have paid their assessment in full and discrimination in favor of those who have not paid their assessment at all. One landowner pays for the benefit derived by

his neighbor. There is no equality of payment according to benefits. Can a special assessment, which under constitutional principles as declared by this court must be levied in accordance with special benefits, be thus extinguished and discharged as directed by the state court, leaving certain landowners to pay for the benefits derived by their neighbors and the latter in turn to pay nothing?

3. Discharge of the assessment without as a minimum the attempted equalization thereof means that one class of landowner reaps all the benefits of credits from the assessment and another group assumes this burden. Yet this is exactly what the California Supreme Court has held in a decision of wide significance. The municipal bankruptcy cases, *Ashton v. Cameron County Water Improvement District,* 298 U.S. 513, and *United States v. Bekins,* 304 U.S. 27, show clearly that when one property owner is required to pay the assessment of another, great hardship and even bankruptcy may result. More significant, perhaps, confidence in the fairness of the law is invaded.

4. In order to achieve the relative equality and substantial justice required by the Constitution, the benefits of the assessment, whether arising from collections on the assessment itself, or arising from the rental or sale of other land which went delinquent for failure to pay its assessment, should be credited in some reasonable manner to all assessment obligees, in an attempt to achieve a reasonable and approximate

equality so that one group of landowners does not pay all of its share of the special assessments and another group have its unpaid assessment credited and marked off. The right of all landowners under the Fourteenth Amendment to an equalization of the assessment would seem fundamental.

The California Legislature here saw that the use of the Bond Fund to pay off the bonds might lead to unfairness; and it enacted a statute by which it attempted an equalization by a call on the assessment. Counsel for respondents here told the standing committee of the legislature that "We think that the inequity which has been referred to is well taken * * *" (R. 34), secured certain amendments, and supported the bill. This call was held, however, by the California Supreme Court to be invalid because the bondholders were held entitled to the money in the Bond Fund. But use of the money in the Bond Fund to pay the bonds is one thing. Automatic discharge of all unpaid assessments representing the obligations based on special benefits is quite another thing and does not follow. As the petitioners here pointed out below, California law provides for equalization of assessments at any time, when there is too little money available, or too much (supra, p. 9). No reason appears why these procedures could not and should not be utilized here.

We have, then, the spectacle of the legislature seeking to cure an inequity; the rejection of its effort by a court on constitutional grounds, as violating a landowner-bondowner contract; and the creation of an in-

equity far greater than that which anyone had suspected might result. The California Legislature sought to equalize the assessment now, rather than to let equalization await the repayment of the bonds; the court holds that there shall be no equalization at all.

5. The instant case is one of first impression, both in the Supreme Court of California and in this court. Cases have been presented where the unpaid portions of special assessments have been paid by federal or state grants, or have been paid from local taxes, or by the issuance of refunding bonds.[7] In none of these cases were property or funds belonging to all the landowners originally assessed taken for the sole benefit of those landowners who had not paid their share of the assessment; and there was a public benefit to be derived from the relief from the assessment, usually an economic distress. There is no public benefit involved in the holding in this case, only a private benefit to a favored class of assessment payers out of funds that should benefit all.

6. The decision sought to be reviewed does not comply with the principles heretofore laid down for assessment districts generally, since it provides for a method of paying an assessment which is unrelated to the benefit to be derived from the works constructed and is related only to the business acumen (or good fortune) of those who for any variety of reasons wait

[7]See cases in annotation, 105 A.L.R. 1169, "Constitutionality of Statutes Relieving Property Subject to Assessment for Improvements from All or Part of Such Assessment" and supplemental cases.

as long as possible to pay their portion of the assessment. No decision of this court has ever indicated that an apportionment of an assessment in accordance with this principle meets the due process or equal protection requirements of the federal Constitution. Nor can it be said that such apportionment is even remotely an "approximation" of the benefits.

7. The principle involved and the question here presented is important to all special assessment procedures, on which the stability of important segments of our economy depend.

The ideals of fair play in our system of administration of justice ought to make it clear that those persons who pay their assessments promptly shall be protected; that while only reasonable approximation of the benefits can be hoped for, each man within fair and equitable limits will pay for the benefits which he has derived. But, in any case, such landowners should not be required to pay for the benefits of those who retain their land, and receive the benefits of the special improvement without any payment at all.

This case involves much more than the specific and special injury done in Reclamation District No. 1500, important as that is, but over and above everything else it involves the question whether the law relating to special assessments, as declared repeatedly by this court, is to be disregarded by indirection and repealed by state pronouncements without equity.

CONCLUSION.

For the foregoing reasons this petiton for a writ of certiorari should be granted.

Dated, Sacramento, California,
August 3, 1953.

STEPHEN W. DOWNEY,
MARTIN MCDONOUGH,
Attorneys for Petitioners.

DOWNEY, BRAND, SEYMOUR & ROHWER,
Of Counsel.

(Appendix Follows.)

Appendix

Note: The following are excerpts from Article II, Chapter I, Title VIII, Part III of the Political Code of the State of California, as they existed when this suit was brought, and at all previous times material hereto, except as noted. In 1951 the Political Code was repealed, and its context allocated to various other codes. The present location of those provisions (1953) is shown by footnote.

"3454. (a) Said board of trustees shall have powers and duties as follows, to wit:

"* * *

"(12) To distribute, among the land owners of the district, after having first provided by order duly entered in their minutes, any funds in the treasury belonging to said districts and not needed for the purposes of reclamation, such distribution to be made among the several land owners in the said district in proportion as said owners were assessed on the last assessment made by said district.'"[1]

"3456. . . . the board of trustees of the reclamation district shall . . . report to the board of supervisors . . . and shall set forth in their said report the estimated cost of the said works of reclamation, and petition the said board of supervisors to appoint three commissioners . . . Upon receipt of said petition from the board of trustees the board of supervisors to whom the same was presented must within not more than sixty days appoint said assessment commissioners above referred to. Said commissioners must view and

[1]Now Water Code Section 50654.

assess upon the land within said district the said sum so estimated and shall apportion the same according to the benefits that will accrue to each tract of land in said district, respectively, by reason of the expenditures of said sums of money, and shall estimate the same in lawful money of the United States.[2]

"The sums must be collected and paid into the county treasury as hereinafter provided, and be placed by the treasurer to the credit of the district, and paid out for the works of reclamation upon the warrants of the trustees, or, if bonds of such district have been issued upon said assessment, then said treasurer shall set the same apart as a separate fund for the purpose of paying the principal and interest of such bonds, and shall not pay any part of the moneys received from such assessment for any purpose other than the payment of the principal and interest of such bonds and the expenses of the county treasurer as hereinafter provided."[3]

"3480. . . . At least ninety days before any interest date of the bonds, including refunding bonds, the county treasurer of the main county shall estimate the amount of money necessary to pay interest and principal maturing on such interest date after crediting thereon the funds in the treasury applicable to the payment thereof, *excluding therefrom any funds in the treasury deposited therein pursuant to Section 3466a of this code or derived from the sale of lands*

[2]Now Water Code Sections 51234-51236.
[3]Now Water Code Sections 51237-51238.

by the county treasurer as trustee of the district under the provisions of this section or Sections 3466a and 3480a of this code and the expenses of the county treasurer hereinafter provided and shall add thereto 15 percent of such aggregate sum to cover possible delinquencies . . .[4]

". . . Any balance remaining in such bond fund, after payment in full of the principal and interest of all outstanding bonds of the district, shall be by the treasurer transferred to the general fund of the district.[5]

". . . Any landowner of the district who shall desire at any time to lessen or remove the lien upon his land of any assessment on which bonds have been or hereafter may be issued may deliver to the county treasurer for cancellation any bonds payable out of said assessment, and the treasurer shall credit against the assessment on his land the principal and accrued interest of said bonds."[6] (Italicized matter added by amendment, ch. 719, sec. 2, Statutes of 1949.)

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[4]Now Water Code Section 51420.
[5]Now Water Code Section 52193.
[6]Now Water Code Section 51651.

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STATUTE

United States Constitution, Fourteenth Amendment 4, 5

IN THE

Supreme Court of the United States

October Term, 1953
No. 246

HANLON BROWN, as County Treasurer of Sutter County, State of California; BOARD OF TRUSTEES OF RECLAMATION DISTRICT No. 1500, the individual trustees being ART DOERING, PHIL LEISER, ADAM RICHTER, H. D. RICHTER, P. A. JACOBSON, J. LEATHERS and L. GARNER,

Petitioners,

vs.

SUTTER BASIN CORPORATION, LTD., a corporation,

Respondent.

Brief in Opposition to Petition for Writ of Certiorari on Behalf of Respondent, Sutter Basin Corporation, Ltd.

Opinions Below.

The opinion of the Supreme Court of the State of California is reported in 40 Advance California Reports (A. C.) 239 and also in 253 P. 2d 649. The opinion of the District Court of Appeal of the State of California for the Third Appellate District, the court of first instance, is reported at 226 P. 2d 600.

Issue Presented.

The sole issue presented by the Petition for Writ of Certiorari, and the sole issue in relation to which Petitioners invoke the jurisdiction of this Court, is whether statutes of the State of California dealing with issuance and discharge of reclamation bonds, as construed by the Supreme Court of the State of California, are unconstitutional under the Fourteenth Amendment to the Constitution of the United States.

Argument.

The Petition for Writ of Certiorari presents no substantial question of constitutional law.

The pertinent provisions of the California statutes, construed by the Supreme Court of the State of California in the proceedings below, are printed in the Appendix to this brief. As construed by the Supreme Court of the State of California these statutes provide substantially as follows:

1. That reclamation bonds will be secured by assessment liens on all land benefited by a work of reclamation, such assessment liens being in the first instance proportionate to benefits conferred;

2. That reclamation bonds will be discharged from funds from two sources: First, from regular payments made by landowners in response to calls, each such payment being in an amount 15% in excess of the amount which would be required to discharge that part of the bond indebtedness then due proportionate to the landowner's assessment lien, this excess being required "to cover possible delinquencies"; and, Second, from proceeds derived from foreclosures of assessment liens securing unpaid calls;

3. That if and to the extent funds derived from foreclosures of assessment liens are adequate to pay bond indebtedness, the remaining obligations of non-delinquent landowners to pay amounts represented by assessment liens will be discharged, the sole purpose of the assessment liens being, after issuance of bonds, to secure that portion of outstanding bond indebtedness which shall not be discharged after exhaustion of proceeds of foreclosures against delinquent lands; and

4. That any landowner may, at any time, discharge the assessment lien on his land by surrender of reclamation bonds in the appropriate amount, in which case he relieves his lands from the obligation to pay any future calls which would otherwise be required for bond service.

Under the foregoing constr ction of the California statutes dealing with reclamation bonds, burdens, rights and options proportionate to benefits originally conferred were clearly imposed on and granted to all landowners concerned. In the case in question, if no landowner had discharged the assessment lien on his land by surrender of reclamation bonds, all landowners would eventually have made actual payments exactly proportionate to the benefits conferred. When some landowners voluntarily elected to discharge the assessment liens on their lands by surrender of reclamation bonds, in order to obtain relief from all obligations to make future payments for bond service, they did so with the knowledge that, as the statutes provided, monies might be deposited in the bond fund from the sale or rental of lands acquired by foreclosure which would make future calls for bond service unnecessary. Moreover, as pointed out by the California Supreme Court in

its opinion below, this voluntary election to discharge assessment liens by some landowners resulted in increasing the amounts payable by the remaining landowners to meet calls to satisfy currently maturing bonds and also forced such remaining landowners to carry, alone, the fifteen per cent overcharge to cover delinquencies. Thus, any inequality in eventual result was caused not by any lack of equity in the California law but by the landowners' exercise of an option which they were free to exercise or not, as they chose, under which they obtained immediate benefits, and which might have worked either to their ultimate advantage or disadvantage, depending on the course of future events.

Because no economic inequality could arise, under the statutes in question as construed by the California Supreme Court, except by reason of an election which landowners were free to make or not, as they chose, the statutes cannot be in violation of the Fourteenth Amendment. This principle is established by a decision of this Court, holding that an employer who had voluntarily elected coverage under a workmen's compensation law, in lieu of having its liability to employees determined by ordinary judicial procedures, could not

> ". . . *In view of such an opportunity for choice* . . . complain that, in the plan for assessing the employer's compensation for injury sustained, there is no particular form of judicial review." (Emphasis supplied.)
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> *Booth Fisheries Company v. Industrial Commission of Wisconsin* (1926), 271 U. S. 208, 210.

None of the cases cited in the Petition for Writ of Certiorari held unconstitutional any state or federal statute under which an alleged lack of relation between taxes

paid and benefits received arose solely because of differences in eventual result due to the exercise of varying options equally available under the statute to all concerned. The reclamation statutes here in question, as construed by the California Supreme Court, are plainly fair and reasonable statutes, which do not violate the Fourteenth Amendment to the Constitution of the United States. Moreover, the real parties in interest represented by Petitioners, the landowners who have discharged their assessment liens in full, are now estopped to question the constitutionality of the laws concerned because they all have accepted substantial benefits under such laws, including relief from the obligation to pay fifteen per cent overcharges for bond service.

Cf., Fahey v. Mallonee (1946), 332 U. S. 245.

Petitioners are dissatisfied with the present relative economic consequences of a calculated business decision made long ago, and are further dissatisfied with a reasonable construction of state statutes made by a state court. They now seek to present to this Court a far-fetched and insubstantial argument that these state statutes are unconstitutional. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX.

Note: The following are excerpts from the Political Code of the State of California which were applied and construed by the California Supreme Court in the proceedings below. In 1951 the Political Code was repealed, and its context allocated to various other codes. The present location (1953) of provisions closely similar to or identical with the quoted excerpts is shown by footnote.

"3456 . . . the board of trustees of the reclamation district shall . . . report to the board of supervisors . . . and shall set forth in their said report the estimated cost of the said works of reclamation, and petition the said board of supervisors to appoint three commissioners. . . . Upon receipt of said petition from the board of trustees the board of supervisors to whom the same was presented must within not more than sixty days appoint said assessment commissioners above referred to. Said commissioners must view and assess upon the land within said district the said sum so estimated and shall apportion the same according to the benefits that will accrue to each tract of land in said district, respectively, by reason of the expenditures of said sums of money, and shall estimate the same in gold coin of the United States.[1]

"The sums must be collected and paid into the county treasury as hereinafter provided, and be placed by the treasurer to the credit of the district, and paid out for the works of reclamation upon the warrants of the trustees, or, if bonds of such district have been issued upon

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[1]California Water Code, Sections 51234-51236.

said assessment, then said treasurer shall set the same apart as a separate fund for the purpose of paying the principal and interest of such bonds, and shall not pay any part of the moneys received from such assessment for any purpose other than the payment of the principal and interest of such bonds and the expenses of the county treasurer as hereinafter provided."[2]

"3480 . . . All moneys collected by any county treasurer upon any assessment upon which bonds shall have been issued, including all moneys derived from sale of land for delinquent installments, or from sale of lands bought by the treasurer at any such sale shall be by such treasurer forthwith paid into the main county treasury, to the credit of the bond fund of such reclamation district, and shall be used exclusively for the payment of principal and interest of said bonds issued on such assessment, and of the principal and interest of any refunding bonds issued thereon."[3]

". . . At least ninety days before any interest date of the bonds, including refunding bonds, the county treasurer of the main county shall estimate the amount of money necessary to pay interest and principal maturing on such interest date after crediting thereon the funds in the treasury applicable to the payment thereof . . . and shall add thereto 15 percent of such aggregate sum to cover possible delinquencies. . . ."[4]

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[2]California Water Code, Sections 51237-51238.
[3]California Water Code, Section 51643.
[4]California Water Code, Section 51420.

". . . Any landowner of the district who shall desire at any time to lessen or remove the lien upon his land of any assessment on which bonds have been or hereafter may be issued may deliver to the county treasurer for cancellation any bonds payable out of said assessment, and the treasurer shall credit against the assessment on his land the principal and accrued interest of said bonds."[5]

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[5]California Water Code, Section 51651.